

SENATE BILL REPORT

ESSB 6191

As Passed Senate, February 11, 1998

Title: An act relating to deeds of trust.

Brief Description: Changing statutes affecting deeds of trust.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Johnson, Roach and Fairley).

Brief History:

Committee Activity: Law & Justice: 1/19/98, 2/2/98 [DPS].
Passed Senate, 2/11/98, 44-0.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: That Substitute Senate Bill No. 6191 be substituted therefor, and the substitute bill do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Fairley, Goings, Hargrove, Kline, Long, McCaslin, Stevens, Thibaudeau and Zarelli.

Staff: David Johnson (786-7754)

Background: A deed of trust is a financing tool created by statute which is, in effect, a tri-party mortgage. The real property owner or purchaser (the grantor of the deed of trust) conveys the property to an independent trustee, who is usually a title insurance company, for the benefit of a third party (the lender) to secure repayment of a loan or other debt from the grantor (borrower) to the beneficiary (lender). The trustee has the power to sell the property nonjudicially in the event of default, or, alternatively, foreclose the deed of trust as a mortgage. Nonjudicial foreclosure is not available if the property involved is used principally for agricultural or farming purposes.— Furthermore, the deed of trust must provide its own terms for sale.

The Deed of Trust Act, adopted in 1965, establishes a streamlined, statutory method for foreclosing on deeds of trust. It was designed to avoid time consuming and expensive judicial foreclosure proceedings and to save time and money for both the borrower and lender.

Practice in this area has departed somewhat from the strict statutory requirements, resulting in a perceived need to clarify and update the act. In 1997 the Governor vetoed SB 5554, regulating deeds of trust, for lack of adequate public exposure and comment. This bill is proposed by the Washington State Bar Association.

Summary of Bill: The Deed of Trust Act is amended to clarify and modernize its procedures, and reflect current practices. A definition section is added. The list of those

who can act as a trustee is revised. Trustees must maintain a street address for personal service.

Notice provisions are revised. New requirements are added to notify more people who are affected by the deed or by a foreclosure and sale. Several types of notices must be more detailed to give more information to the affected parties, including tenants, the borrower, and guarantors (i.e. co-signers). The processes and requirements for giving notice are more streamlined and defined.

Requirements are placed on participants that enhance their accessibility and ease the mechanics of the foreclosure process. The process for giving notice is streamlined and obligations are specifically defined. When a bankruptcy is also occurring, provisions are added to minimize unnecessary delay in a foreclosure sale.

Ambiguities about court involvement and other requirements are clarified, and when a trustee's sale is final is made clear.

Unnecessary involvement by extra parties is eliminated. The beneficiary has more direct power over the trustee.

Sale details and procedures are specified. Consumer Protection Act coverage is added for interfering with a sale. Liability of borrowers and guarantors after sale is defined.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: These changes are necessary for greater efficiency. They reflect the state of practice in the field. The bill represents results of a consensus of the professionals in the field. These are very positive changes for all involved.

Testimony Against: The procedure allowing banks to reconvey upon full payment of a loan without the involvement of the trustee is dangerous for consumers. The bill is good except for this section.

Testified: Gordon Tanner, David Rockwell, Washington State Bar Association (pro); Gary Fallon, Washington Mortgage Lender Association (pro); Bill Ronhaar, Gary Kissling, Washington Land Title Association (con); Tom Peterson, attorney (con).

House Amendment(s): It is clarified that a receiver may be appointed for any of the independent reasons listed; more than one is not necessary.